

exceed \$5 thousand unless approved by the court for good cause.

When deciding whether to appoint a guardian ad litem, the court must consider several new factors which include the wishes of the parents, contentiousness of the parties, the ability of the parents to pay for the guardian, the age of the child, and the usefulness of the guardian to the court.

The bill requires that a guardian ad litem appointed on or after January 1, 2006 shall:

- be an attorney licensed to practice law in New Mexico;
- have a minimum of five years experience in the practice of law, with at least fifty percent of that practice having been in family law or domestic relations matters; and
- possess such other qualifications as determined by the New Mexico supreme court to include training in child development.

The bill adds that in all cases where a guardian ad litem has been appointed before custody or time-sharing is decided by the court, a child six years of age or older shall have the right to petition to give testimony

Every order appointing a guardian ad litem shall:

- state the guardian ad litem's duties with particularity either as determined by the court or by the procedure set forth in the New Mexico rules of evidence;
- include the duration of the appointment, which shall not exceed one year unless extended by the court for good cause;
- state the professional fee the guardian ad litem is authorized to charge and provide for the rendering of itemized monthly statements to the parties and counsel;

The bill specifies that a guardian ad litem's duties and responsibilities will include the following:

Conducting interviews with the child face to face outside the presence of both parents and counsel if the child is age six or older; conducting interviews of both parents, conducting interviews of any preexisting therapist for the child after obtaining the necessary authority for the release of information; and conducting such other interviews of persons at the guardian ad litem's or the court's discretion after obtaining the necessary authorization for the release of information.

Submitting a written report of investigation, findings and recommendations as may be directed by the court, which shall be filed of record at least fourteen days before it is to be entertained by the court with copies provided to both parents, each parent's counsel, all parties and the court, except in case of emergency.

Reporting to the court the child's wishes, regardless of recommendations;

The bill requires that an order appointing a guardian specify his or her duties, fee, duration of appointment not to exceed one year unless extended by the court for good cause, that the guard-

ian has no authority to obligate the parents to pay for a therapist without advance approval of the parents or the court upon hearing, and must specify that the guardian will serve as a witness if called by the court or either parent.

The bill also revises the mediation procedures and expands the definition of domestic abuse, for purposes of Section 40-4-8, to include such conduct as “repeatedly driving by a residence or workplace”, stalking, telephone harassment, and other conduct.

Significant Issues

The intent of the bill appears to put into statute guardian ad litem requirements and procedures as well as clarifying the mediation process in order to ensure fair and uniform treatment to children and adults involved in a highly emotional domestic relationship.

The AGO states the bill protects parents from paying guardian ad litem and therapist fees without their consent or approval of the court after hearing.

FISCAL IMPLICATIONS

There will be minimal administrative costs for statewide update, distribution, and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law.

ADMINISTRATIVE IMPLICATIONS

The new restrictions regarding appointment of guardians ad litem will have to be implemented by the courts. The courts will also have to interpret and implement the new mediation requirements imposed by this bill.

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